

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GLEN D. BARRINGTON

Claimant

VS.

GEORGIA PACIFIC CORPORATION

Self-Insured Respondent

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Docket No. 223,480

ORDER

Respondent appeals Administrative Law Judge (ALJ) Bryce D. Benedict's December 11, 2001, Order. The Appeals Board (Board) heard oral argument on June 18, 2002.

APPEARANCES

Claimant appeared by his attorney, John J. Bryan of Topeka, Kansas. Respondent, a self-insured, appeared by its attorney, Nathan D. Burghart of Topeka, Kansas.

RECORD

The record consists of the December 5, 2001, Penalty Hearing and the pleadings and documents contained in the Workers Compensation Division's administrative file.

ISSUES

This matter came before the ALJ on claimant's Request for Penalties Pursuant to K.S.A. 44-512a filed on March 20, 2000. Claimant requested penalties for unpaid medical bills, prescriptions and medical mileage expenses incurred by claimant for the treatment of chronic obstructive pulmonary disease (COPD), emphysema and bronchitis allegedly either caused or contributed to by the exposure to dust and other irritants while working for the respondent. The ALJ denied claimant's request for penalties, but ordered payment of the itemized medical expenses set forth in the penalties' request to be paid by the respondent as authorized medical expenses. The ALJ also ordered respondent to pay claimant's attorney fees in the amount of \$600 for representing claimant in the post-award proceeding.

Respondent appeals and contends it is not responsible for payment of the medical expenses because the ALJ in a February 1, 2000, Award found claimant had failed to

prove the COPD, emphysema and bronchitis conditions were either caused or contributed to by his exposure to dust and other irritants while working for respondent. Accordingly, respondent argues the claimant's rights under the Workers Compensation Act for benefits were terminated and extinguished at that time. Additionally, respondent argues claimant is not entitled to attorney fees because the penalties' request was not a post-award proceeding.

In contrast, the claimant argues the ALJ not only should have ordered the medical expenses paid by respondent but also should have ordered penalties. Claimant contends the requested medical expenses are for medical treatment incurred before the ALJ's February 1, 2000, Award that denied the claim. Accordingly, claimant argues the July 29, 1998, preliminary hearing Order remained in effect for all of the medical expenses requested because the expenses were incurred before the February 1, 2000, Award. Therefore, claimant requests the Board to assess penalties against the respondent for the unpaid medical expenses. Also, claimant argues the penalties' request was made after the February 1, 2000, Award making the proceeding a post-award proceeding requiring the respondent to pay claimant's attorney fees.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs and parties' arguments, the Board makes the following findings and conclusions:

The claimant filed his Application for Hearing in this matter on June 6, 1997. Claimant was a long-time employee of respondent from April 1973 through March 18, 1997. He left respondent's employment on the recommendation of his treating physician, John H. Rudersdorf, M.D., because of severe respiratory conditions allegedly caused by or contributed to from the exposure of dust and other irritants while working for respondent.

The first preliminary hearing Order was entered on August 12, 1997, granting claimant's request for temporary total disability compensation and appointing Dr. Rudersdorf as claimant's authorized treating physician. Respondent timely appealed that preliminary hearing Order to the Board raising the timely notice issue and arguing that the ALJ exceeded his jurisdiction when he appointed Dr. Rudersdorf as claimant's treating physician. The Board, in an Order dated November 4, 1997, found claimant had provided respondent with timely notice of an occupational disease and dismissed the respondent's appeal regarding Dr. Rudersdorf's appointment, because it did not have jurisdiction to otherwise review that preliminary hearing issue.

The July 29, 1998, preliminary hearing Order is the subject of this appeal. The respondent was ordered to pay medical treatment expenses provided by Dr. Rudersdorf and any referrals until further order. The respondent was also ordered to pay certain medical bills and expenses admitted at the preliminary hearing as authorized medical expenses.

The regular hearing was then held on December 16, 1999, and the ALJ entered the final Award on February 1, 2000. The February 1, 2000, Award found claimant failed to prove his exposure to dust and other irritants while employed by the respondent either caused or contributed to his COPD, emphysema and bronchitis condition. On November 22, 2000, the Board affirmed the ALJ's Award.

After the ALJ's Award, claimant served respondent and its attorney with a demand for compensation pursuant to the penalties statute found at K.S.A. 44-512a. The demand for penalties was for unpaid prescriptions, medical treatment and mileage expenses incurred by claimant before the ALJ's February 1, 2000, Award. The demand was made in accordance with the July 29, 1998, preliminary hearing Order. The total amount of the claimed medical expenses was \$1,683.74.

As the result of that demand, respondent did not pay the requested medical expenses. Thereafter, on March 20, 2000, claimant filed his Request for Penalties Pursuant to K.S.A. 44-512a. Included in that request were additional medical expenses of \$1,365.48 that he had not included in the demand for a total of \$3,049.22, in unpaid medical expenses.

The penalty hearing was not held until December 5, 2001, almost one year and nine months from the date the request for penalties was filed. The ALJ, on December 11, 2001, denied claimant's request for penalties, but ordered respondent to pay the medical expenses set forth in the request for penalties and ordered respondent to pay claimant's request for attorney fees.

The respondent appeals and principally argues that the ALJ's February 1, 2000, Award that found the claim noncompensable effectively terminated and extinguished claimant's rights under the July 29, 1998, preliminary hearing Order. Accordingly, since the July 29, 1998, preliminary hearing Order had no legal effect at the time the claimant made the demand for payment of unpaid medical expenses, the respondent no longer had any responsibility under the Workers Compensation Act to pay the requested expenses.

The Board generally agrees with the respondent's argument. The Board concludes the ALJ's and the Board's jurisdiction to enforce the preliminary hearing order was extinguished and terminated at the time of the original award when the ALJ found the claim noncompensable. Accordingly, neither the ALJ nor the Board has jurisdiction to order respondent to pay medical expenses or attorney fees after the claim was found noncompensable.¹

¹ See *Galvan v. Hearthstone Retirement Community*, No. 88,968 (Kan. Ct. App. Feb. 7, 2003) A not designated for publication holding that the Board was without jurisdiction to award temporary total disability and medical benefits previously paid, once the Board found the claim noncompensable. The memorandum opinion is attached per 2003 Kan. Ct. R. Annot. 7.04.

AWARD

WHEREFORE, the ALJ's December 5, 2001, Order should be and is hereby reversed as the ALJ was without jurisdiction to enter the Order because the ALJ had previously found the claim noncompensable in a February 1, 2000, Award.

IT IS SO ORDERED.

Dated this _____ day of April 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John J. Bryan, Attorney for Claimant
Nathan D. Burghart, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Director, Division of Workers Compensation